IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1784 of 2007
To
SPECIAL CRIMINAL APPLICATION No. 1786 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VIVEKANAND CO-OP. CREDIT SOC. LTD. THRO GAUTAMBHAI N. PATEL - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR JC VYAS for Applicant(s) : 1,
MR DIPEN DESAI, APP for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 18/10/2007

ORAL JUDGMENT

Rule. Learned APP Shri Dipen Desai waives

service of rule on behalf of respondent No.1 State. It is not necessary to await service of notice of rule to respondent No.2, in the facts of the present case.

2. The petitions are taken up for final disposal today. In the present petitions, the petitioner original complainant has challenged the three separate orders dated 4.11.2006 passed by the learned Judicial Magistrate, First Class, Unjha in Criminal Cases No.497, 498 and 499 of 2001. By the impugned orders, the learned Magistrate was pleased to dismiss the criminal cases recording that since long the cases are pending at the stage of issuance of warrant to the accused and despite adjournments, process has not been paid. In that view of the matter, the learned Magistrate found that no useful purpose would be served in keeping the complaint. On that basis, all the three criminal cases came to be dismissed.

3. Learned advocate for the petitioner submitted that it was on account of the oversight and negligence on the part of the learned advocate, the process was not paid. He assured the Court that if given an opportunity, process would be paid immediately and proper care would be taken to ensure that in future such non-cooperation for and on behalf of the complainant does not occur. Counsel further submitted that the original accused has not been served at any stage of the matter and that therefore

before setting aside the order passed by the learned Magistrate, hearing him may not be necessary.

4. Considering the submissions made, though I find that that the learned Magistrate was justified in passing the impugned orders on account of the non-prosecution by the petitioner, since he has made out a case that he was not aware about the entire situation, in the interest of justice, these petitions are allowed. The impugned orders are quashed on condition that the petitioner shall pay the process before the learned Magistrate within a period of four weeks from today,

5. In the result, upon quashing of the impugned orders, the complaint stand restored to file. These petitions stand disposed of accordingly. Rule is made absolute to the above extent.

(Akil Kureshi, J.)

(vjn)